

Application No.: 10/661,997

Petition dated: October 23, 2006

Response to Notice of Abandonment of: August 24, 2006



In the United States Patent and Trademark Office

Application Number: 10/661,997

Applicant: Garry Tsaor

Application Filed: September 12, 2003

Application Title: Specimen Collector

Examiner / GAU: Jeffrey Gerben Hoekstra / 3736

Mailed: October 23, 2006

At: Rancho Cucamonga, California

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**Petition Under 37 C.F.R. § 1.181(a)
Requesting Withdrawal of the Holding of Abandonment**

Dear Sir:

It is respectfully petitioned that the holding of abandonment of the above-identified patent application be withdrawn.

Application No.: 10/661,997

Petition dated: October 23, 2006

Response to Notice of Abandonment of: August 24, 2006

The utility patent application was filed on September 12, 2003. The first office action was mailed on December 12, 2005 and the response to that office action was mailed on January 9, 2006.

On February 10, 2006, the second non-final office action was mailed from the USPTO. The applicant mailed the responses to the second non-final office action on August 9, 2006 with a Petition for Extension of Time Under 37 CFR 1.136(a) and a check for \$510.00 for the 3-month extension fee. The entire response to the second non-final office action that was mailed on August 9, 2006 comprises:

- Petition for Extension of Time Under 37 CFR 1.136(a) (Form PTO/SB/22)
- 3 Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application (Form PTO/SB/25)
- Amendment with a Certificate of Mailing dated August 9, 2006 (7 pages)
- A check for the 3-month extension fee of \$510.00 (Check No. 010039)
- Postage Prepaid Self-Addressed Return Receipt Postcard with itemized list of documents submitted

Applicant's attorney had received the postage prepaid self-addressed return receipt postcard returned from the USPTO with a stamp indicating it was received by the USPTO on August 14, 2006. Furthermore, the bank, Far East National Bank, from which the check (check no. 010039) was drawn from had verified that the check had been deposited on August 18, 2006.

Subsequently, applicant's attorney received the Notice of Abandonment mailed August 24, 2006 from the USPTO.

Application No.: 10/661,997

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It is clear that the responses to the second non-final office action was timely mailed and received by the USPTO. Applicant never intended to abandon the patent application and, in fact, did fully respond to the second non-final office action. Applicant also acted promptly after receiving the Notice of Abandonment in an attempt to have the holding of abandonment withdrawn.

In support of this petition, the applicant submits a copy of the Amendment and Responses that was mailed on August 9, 2006 to the USPTO in response to the non-final office action of February 10, 2006, comprising:

- Petition for Extension of Time Under 37 CFR 1.136(a) (Form PTO/SB/22)
- 3 Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application (Form PTO/SB/25)
- Amendment with a Certificate of Mailing dated August 9, 2006 (7 pages)
- A check for the 3-month extension fee of \$510.00 (Check No. 010039)
- Postage Prepaid Self-Addressed Return Receipt Postcard with itemized list of documents submitted, which is stamped received by the USPTO on August 14, 2006

Conclusion


For the foregoing reasons, it is requested that this petition be granted and the holding of abandonment be withdrawn.

Application No.: 10/661,997

Petition dated: October 23, 2006

Response to Notice of Abandonment of: August 24, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe Nieh", is written over a horizontal line.

Joe Nieh

Registration Number: 46,961

18760 E. Amar Road, #204

Walnut, CA 91789

Tel: (626) 964-4227

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E-Mail: nieh@justice.com

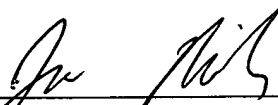
Application No.: 10/661,997

Petition dated: October 23, 2006

Response to Notice of Abandonment of: August 24, 2006

Certificate of Mailing: I certify that on the date below this document and referenced attachments, if any, will be deposited with the U.S. Postal Service by Express Mail in an envelope addressed to: "Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450."

October 23, 2006



Joe Nieh
Registration Number: 46,961
18760 E. Amar Road, #204
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Tel: (626) 964-4227
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Swabplus Inc.

Attn.: Joe Nieh

9669 Hermosa Avenue

Rancho Cucamonga, California 91730



Acknowledgment of receipt of:

Petition for Extension of Time with \$510.00 Fee

3 Terminal Disclaimers to Obviate a Provisional
Double Patenting Rejection

Amendment dated 8-9-2006 (7 pages)

Inventor/Applicant: Garry Tsaur

Title of Invention: Specimen Collector

Application Number: 10/661,997

Filing Date: 09/12/2003

Examiner: Jeffrey Gerben Hoekstra

Art Unit: 3736



Under the paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

FY 2005

(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)

Docket Number (Optional)

Application Number 10/661,997

Filed 09/12/2003

For Specimen Collector

Art Unit 3736

Examiner Jeffrey Gerben Hoekstra

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

	<u>Fee</u>	<u>Small Entity Fee</u>	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225	\$ _____
<input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1020	\$510	\$ 510.00
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1590	\$795	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2160	\$1080	\$ _____

☒ Applicant claims small entity status. See 37 CFR 1.27.

☒ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number _____. I have enclosed a duplicate copy of this sheet.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the ☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

☒ attorney or agent of record. Registration Number 46,961

☐ attorney or agent under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


Signature

8-9-2006
Date

Joe Nieh

(626) 964-4227

Typed or printed name

Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**TERMINAL DISCLAIMER TO OBTAIN A PROVISIONAL DOUBLE PATENTING
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)

In re Application of: Garry Tsaur

Application No.: 10/661,997

Filed: 09/12/2003

For: Specimen Collector

The owner*, Garry Tsaur, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending **reference** Application Number 10/670,961, filed on 09/25/2003, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the **reference** application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

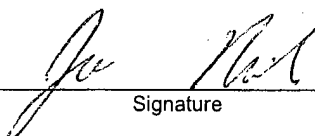
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said **reference** application, "as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application," in the event that: any such patent: granted on the pending **reference** application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 46,961



Signature

09-2006

Date

Joe Nieh

Typed or printed name

(626) 964-4227

Telephone Number

- ☐ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**TERMINAL DISCLAIMER TO OBTAIN A PROVISIONAL DOUBLE PATENTING
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)

In re Application of: Garry Tsaor

Application No.: 10/661,997

Filed: 09/12/2003

For: Specimen Collector

The owner*, Garry Tsaor, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number 10/657,682, filed on 09/08/2003, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

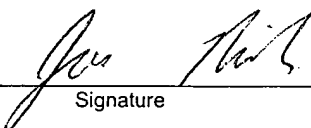
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said reference application, "as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application," in the event that: any such patent: granted on the pending reference application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 46,961



Signature

8-9-2006

Date

Joe Nieh

Typed or printed name

(626) 964-4227

Telephone Number

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Docket Number (Optional)

In re Application of: Garry Tsaor

Application No.: 10/661,997

Filed: 09/12/2003

For: Specimen Collector

The owner*, Garry Tsaor, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending **reference** Application Number 10/661,995, filed on 09/08/2003, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the **reference** application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said **reference** application, "as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application," in the event that: any such patent: granted on the pending **reference** application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 46,961


Signature

8-9-2006
Date

Joe Nieh

Typed or printed name

(626) 964-4227
Telephone Number

- ☐ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

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If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Application No.: 10/661,997
Amendment dated: August 9, 2006
Reply to Office Action of: February 10, 2006

In the United States Patent and Trademark Office

Application Number: 10/661,997
Applicant: Garry Tsaor
Application Filed: September 12, 2003
Application Title: Specimen Collector
Examiner / GAU: Jeffrey Gerben Hoekstra / 3736

Mailed: August 9, 2006
At: Rancho Cucamonga, California

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Dear Sir:

Please find enclosed is a Petition for Extension of Time Under 37 CFR 1.136(a) along with a check (check no. 010039) for the 3-month extension fee of \$510.00. Also enclosed are 3 Terminal Disclaimers to obviate the provisional double patenting rejections. In response to the Office Action of February 10, 2006, please amend the above-identified application as follows:

Application No.: 10/661,997

Amendment dated: August 9, 2006

Reply to Office Action of: February 10, 2006

Amendments to the Claims are reflected in the listing of claims which begins on page 3 of this paper.

Remarks/Arguments begin on page 5 of this paper.

Application No.: 10/661,997
Amendment dated: August 9, 2006
Reply to Office Action of: February 10, 2006

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claim 1 (currently amended): A specimen collector comprising a hollow elongated tubular housing without any elongated member inside and with a sealed end without any air outlet and an open end with an opening means provided near said sealed end wherein the specimen collector may be used to collect liquid specimen and subsequently release the specimen by allowing air to enter the hollow elongated tubular housing through said opening means.

Claim 2 (original): A specimen collector as in claim 1, wherein the opening means is a score line.

Claim 3 (original): A specimen collector as in claim 1, wherein the opening means is a snap-on cap.

Claim 4 (original): A specimen collector as in claim 1, wherein the opening means is a screw-on cap.

Claim 5 (currently amended): A specimen collector comprising a hollow elongated tubular housing without any elongated member inside and with a sealed end without any air outlet and an open end with an opening means provided near said sealed end and a viscous fluid provided near said open end to seal said open end wherein the specimen collector may be used to collect liquid specimen and wherein said viscous fluid will seal the collected liquid specimen in the

Application No.: 10/661,997

Amendment dated: August 9, 2006

Reply to Office Action of: February 10, 2006

hollow elongated tubular housing and subsequently release the specimen by allowing air to enter the hollow elongated tubular housing through said opening means.

Claim 6 (original): A specimen collector as in claim 5, wherein the opening means is a score line.

Claim 7 (original): A specimen collector as in claim 5, wherein the opening means is a snap-on cap.

Claim 8 (original): A specimen collector as in claim 5, wherein the opening means is a screw-on cap.

Claim 9 (original): A specimen collector as in claim 5, wherein the viscous fluid is silicone.

Claim 10 (original): A specimen collector as in claim 6, wherein the viscous fluid is silicone.

Claim 11 (original): A specimen collector as in claim 7, wherein the viscous fluid is silicone.

Claim 12 (original): A specimen collector as in claim 8, wherein the viscous fluid is silicone.

REMARKS/ARGUMENTS

Claims 1 and 5 have been amended to more clearly distinguish applicant's invention from that of Coleman et al. (United States Patent No. 5,065,768) and Koll et al. (United States Patent No. 5,129,402).

Coleman et al. (United States Patent No. 5,065,768) discloses a self-sealing fluid conduit and collection device. The device comprises of a fluid collection tube with a plug-end. The fluid to be collected enters tube through the other end. A plug of super-absorbent material is provided at the plug-end of the fluid collection tube. A vent channel is provided axially within the plug to provide an outlet for the gas displaced during fluid collection. As the fluid enters the tube and reaches the end of the tube, it causes the vent channel in the plug to swell and constrict. As the plug swells, it constricts and closes the vent channel and seals the plug-end. In one embodiment, an interphase gel sealant material is placed alongside the inner wall of the tube without sealing the tube. After blood has been introduced into the fluid collection tube, the tube is then centrifuged to separate the blood into its light and heavy phase components separated by the sealant material.

Koll et al. (United States Patent No. 5,129,402) discloses an apparatus for collecting and/or growing protected biological specimens. The apparatus comprises of an elongated outer hollow tubular member and an inner elongated rod. A specimen collector swab is mounted to the forward end portion of the rod. The rearward end portion of the rod is provided with a rearward extension which terminates at a finger gripping loop. A forward seal is mounted within the forward end of the tubular member. A second flex seal is mounted at the forward end of rod just behind the specimen collector. A third seal is fixedly secured to the inner surface of the

Application No.: 10/661,997
Amendment dated: August 9, 2006
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outer tubular member and includes a centrally located aperture to permit the inner rod to move slidably within the seal. The seals are preferably made of a medical grade silicone elastomer. A fourth seal may be mounted some distance behind the seal and is otherwise similarly constructed and fixed within the outer tubular member.

Applicant's claimed invention is a specimen collector comprising a hollow elongated tubular housing with a sealed end and an open end. An opening means in the form of a score line is provided near the sealed end. The specimen collector may be used to collect liquid specimen and subsequently release the specimen by allowing air to enter the hollow elongated tubular housing through the opening means. In one embodiment, a viscous substance is placed inside the housing near the open end. The viscous fluid functions as an automatically opening and closing valve to allow specimen to pass through it and subsequently automatically closes the opening through which the specimen passed through.

Applicant hereby submits that the claim rejections under 35 U.S.C. §102(b) and (e) have been overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,




Joe Nieh
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E-Mail: nieh@justice.com

Application No.: 10/661,997
Amendment dated: August 9, 2006
Reply to Office Action of: February 10, 2006

Certificate of Mailing: I certify that on the date below this document and referenced attachments, if any, will be deposited with the U.S. Postal Service by 1st Class Mail in an envelope addressed to: "Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450."

August 9, 2006



Joe Nieh
Registration Number: 46,961
18760 E. Amar Road, #204
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E-Mail: nieh@justice.com

SWABPLUS, INC.

Vendor No.: DI0000

Name: Director Of The United States

Check No.: 10039

010039

Inv. Date Reference

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V37643

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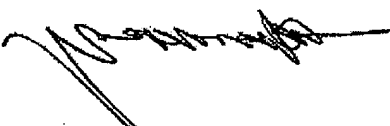
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